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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
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10 United States of America,	)	No. CR 04-0328-PHX-NVW
11 Plaintiff,	)	No. CV 05-2472-PHX-NVW(MEA)
12 v.	)	<b>ORDER</b>
13 Guadalupe Arredondo-Zazueta,	)	
14 Defendant/Movant.	)	
15 _____	)	

16 Movant Guadalupe Arredondo-Zazueta filed a *pro se* Motion to Vacate, Set Aside,  
17 or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (doc. #1).  
18 The Court will dismiss the motion with leave to amend.

19 **A. Failure to Use the Court-Approved Form**

20 The Rules Governing Section 2255 Cases allow the Court, by local rule, to prescribe  
21 a form to be used for filing a § 2255 action. See Rule 2(c), Rules Governing Section 2255  
22 Proceedings. Under this Court's local rule, Movant must use the court-approved form when  
23 he files a *pro se* petition pursuant to 28 U.S.C. § 2255. See LRCiv 3.5(a). Movant has not  
24 used the court-approved form.

25 The Court may, in its discretion, forgo the requirement of a form. In this case,  
26 however, the Court must insist on its use because Movant's submission does not substantially  
27 comply with the form for a § 2255 proceeding. Movant has used a form that the Court  
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previously has seen filed by numerous other prisoners. The form asserts a claim that the Movant's equal protection rights have been violated because as an alien, Movant is not entitled to a one-year reduction of sentence based on participation in a drug program, whereas a United States citizen is entitled to the reduction. A similar claim is made regarding release to a halfway house. It is not entirely clear whether these circumstances actually apply to Movant. Consequently, because the form is inadequate for a § 2255 proceeding, the Motion will be dismissed with leave to file an Amended Motion within thirty days.

**B. Amendment**

Any Amended Motion must be submitted on the court-approved form and signed under penalty of perjury. In particular, Movant must list each ground for relief and state the facts supporting each ground. Movant is advised that the Amended Motion must be retyped or rewritten in its entirety on a court-approved form and may not incorporate any part of the original Motion by reference. Any Amended Motion submitted by Movant should be clearly designated as such on the face of the document. The Clerk of Court will be directed to provide Movant with a form for filing a § 2255 action.

Movant is further advised that an amended § 2255 Motion supersedes the original Motion. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.), cert. denied, 506 U.S. 915 (1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the original pleading is treated as nonexistent. Ferdik, 963 F.2d at 1262. Thus, grounds for relief alleged in the original Motion which are not alleged in the amended Motion are waived. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

**C. Rule 41 Cautionary Notice**

Movant should take notice that if he fails to timely comply with every provision of this Order, or any order entered in this matter, this action will be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.) (district court may dismiss action for failure to comply with any order of the Court), cert. denied, 506 U.S. 915 (1992).

**IT IS THEREFORE ORDERED that:**

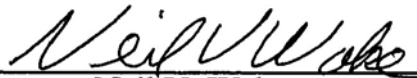
(1) The “Motion for Time Reduction by an Inmate in Federal Custody (28 U.S.C. § 2255)” (doc. #1) is **dismissed** with leave to amend. Movant shall have **thirty days** from the date of filing of this Order to file an Amended Motion in accordance with the Court’s Order.

(2) The Clerk of the Court shall enter a judgment of dismissal of this action without prejudice and of the accompanying civil action (CV 05-2472-PHX-NVW (MEA)) without further notice to the Movant if he fails to comply.

(3) At all times during the pendency of this action, Movant shall immediately advise the Court of any change of address and its effective date. Such notice shall be captioned “NOTICE OF CHANGE OF ADDRESS.” The notice shall contain only information pertaining to the change of address and its effective date. The notice shall not include any motions for any other relief. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute pursuant to FED. R. CIV. P. 41(b).

(4) The Clerk of Court is directed to provide to Movant a current court-approved form for filing a Motion to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody (28 U.S.C. § 2255).

DATED this 7<sup>th</sup> day of October, 2005.

  
\_\_\_\_\_  
Neil V. Wake  
United States District Judge